

JOHN ASHCROFT
Governor

DERICK A. BRUNNER
Director



STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF ENVIRONMENTAL QUALITY

P.O. Box 176
Jefferson City, MO 65102

Division of Energy
Division of Environmental Quality
Division of Geology and Land Survey
Division of Management Services
Division of Parks, Recreation,
and Historic Preservation

FAX COVER SHEET

Waste Management Program
(314) 751-3176
FAX (314) 751-7869

RECEIVED
JUN 14 1989
PRMT-SECTION

TO:

Miss Deborah Kennedy
EPA III RCRA Permits
236-2888

FAX #:

913-236-2845

Number of Sheet(s) Transmitted:

16

SUBJECT:

Lead Smelter Agreements

FROM:

Frank Dolan



R00317242
RCRA RECORDS CENTER

IF YOU HAVE ANY PROBLEMS WITH THIS
TRANSMISSION, PLEASE CONTACT THE WASTE
MANAGEMENT PROGRAM

RCRA FILE COPY
MO0059200089
DOCUMENT # 49

January 18, 1984

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JAN 25 1984

Robert J. Schreiber, Jr., P.E.
Director of Environmental Quality
Missouri Department of Natural
Resources
1101 Rear Southwest Boulevard
P.O. Box 1368
Jefferson City, MO 65102

WASIA
MANAGEMENT PROGRAM

Re: Settlement of ASARCO Incorporated v. Fred Lafser,
et al.; AMAX Lead Company of Missouri, et al. v.
Fred Lafser, et al.

Dear Bob:

At a meeting in the offices of the Missouri Department of Natural Resources ("DNR") on October 28, 1983, ASARCO Incorporated ("ASARCO") and AMAX Lead Company of Missouri ("AMAX") discussed with you and Dave Bedan of the Missouri DNR possible settlement of the above-referenced cases on the terms outlined in this letter. We discussed the status of the cases in light of recent Missouri legislation which exempts wastes at the companies from present hazardous waste regulation and the fact that the companies would be willing to submit voluntarily to controls specially tailored to the smelting industry.

While the precise terms were not agreed upon at the meeting, the parties present agreed in concept to cooperate in the drafting and implementation of a voluntary program designed to provide long-term protection of ground water and stabilization or containment of the smelters' respective smelter slag piles. In return, the DNR agreed to the release to ASARCO of \$20,000, plus interest, and the release to AMAX of \$10,000, plus interest, which amounts are presently retained in the Registry of the Court, and waive any demand for payment by either company of generator fees which may be due. The DNR will also assist AMAX in obtaining the return of \$10,000 previously paid to the Missouri Department of Revenue. In addition, the companies will dismiss the pending lawsuits without prejudice and the DNR will dismiss

its counterclaim against ASARCO. Of course, an appropriate settlement agreement and joint motion for approval of settlement agreement would have to be prepared and signed by the respective parties to the litigation prior to dismissal. We anticipate that our counsel will prepare such draft pleadings for everyone's review in the near future.

Although it was agreed at the October 28 meeting that ASARCO and AMAX would prepare and submit to the DNR by December 1, 1983, a letter or a document confirming the conceptual agreement and the companies' willingness to proceed with a voluntary program of environmental controls, it has taken more time than originally thought necessary to obtain approvals from respective corporate headquarters and talk to technical people and/or consultants regarding possible control measures. Please accept our apologies for the delay in responding by the December 1 deadline. We wish to express, however, that the delay is in no way intended to be and should not be interpreted to be an indication of the companies' hesitancy or uncertainty to proceed with a voluntary and cooperative program on the basis of the terms outlined and we reiterate our desire to work with the DNR in that regard.

Again, although precise terms and conditions were not specifically discussed, ASARCO and AMAX agreed to formulate a mutually agreeable program to address potential ground water problems, to ascertain the best methods of stabilization or containment of the respective smelter slag piles and to take appropriate and reasonable measures to address problems or potential problems in light of the facts and circumstances discovered. It is the intent of all parties to cooperate in the creation of an agency/industry model or prototype of voluntary controls. Particular means of implementing and enforcing the voluntary controls were not decided, although we discussed the possibility of implementing the controls through an order of the court as part of a settlement agreement in the litigation, through an appropriate agreement between the companies and the DNR, through a special regulatory program either under the present Hazardous Waste Management Law or the Solid Waste Management Law, or through new, special legislation jointly drafted and presented by the DNR and the companies. In light of the fact that smelter slag waste is not viewed as being particularly hazardous, if hazardous at all, the parties agreed that such high volume, relatively low hazard waste could be appropriately addressed under some type of special program.

With that in mind, ASARCO and AMAX intend to propose the following course of action and request the DNR's acknowledgement of the appropriateness of this course of action as outlined below. ASARCO and AMAX also request that the DNR keep in mind that the technical program proposed, although proposed in good faith, is the companies' best estimate at this time of how the parties should first proceed. Obviously, changes or adjustments will need to be made as the envisioned special arrangements develop. All of the participants will have to proceed in good faith in order to ensure the success of this novel agency/industry cooperative program.

ASARCO and AMAX agree to conduct a two-phase program of voluntary controls including investigations and studies of geological and hydrological conditions to determine the nature and extent of potential environmental problems posed by the companies' respective smelter slag piles. Detailed studies are necessary in order to prescribe and adhere to a program of voluntary responses focusing on problems posed to the protection of ground water, usable as a drinking water source, underlying the companies' smelter plant sites and on stabilization or containment of their smelter slag piles, along with ultimate closure upon cessation of ongoing operations.

Phase 1 of the two-phase program will be commenced as soon as reasonably possible upon execution of appropriate settlement agreements. The necessity for and nature of Phase 2 will be determined from the results of Phase 1.

Phase 1

1. Existing geologic and hydrologic data available for the plant sites and the immediately surrounding areas will be reviewed. Existing data will be supplemented with field studies to the extent necessary, but, due to the concern to avoid potential contamination of any underlying ground water aquifers, the companies do not desire any initial ground water drilling on-site until after technical investigations are conducted. The results of the investigations will be a full and specific characterization of the geology and hydrology at the sites, including at a minimum, a description of geologic formations and aquifers, a detailed description of surface water flows and runoff patterns, depth to ground water,

depth to the nearest hydrological barrier layer, likelihood of communication between aquifers, general piezometric gradient, and details of ground water flow in the uppermost aquifers and other aquifers which may be in communication with the uppermost aquifers.

2. Water wells on-site at each plant and in the vicinity of the plants will be reviewed. This review will include, at a minimum, well location, depth, age, type of construction, use, available historical information, and water quality. If poor water quality is discovered, investigations into possible causes will be initiated.
3. Present practices for controlling surface and subsurface runoff from the respective smelter slag piles and the adequacy and integrity of such practices for containing such runoff will be reviewed.
4. The existing smelter slag piles will be studied and reviewed, including reviews of existing data to make recommendations for conducting ground water monitoring and sampling at the plant sites and for stabilizing or containing the piles.
5. Reports on the results of the investigations and studies will be prepared at their conclusion. The reports will contain evaluations of information collected and explanations and suggestions for further responses to any unusual environmental effects or concentrations of substances or contaminants.

Phase 2

1. The extent of ground water monitoring and sampling, if any, demonstrated to be necessary during Phase 1 will be commenced and conducted after consultation with the Missouri DNR.
2. In the case of the smelter slag piles and any other situations discovered in the investigations and studies which require responsive actions, ASARCO and AMAX after consultation with

the Missouri DNR will identify and supply a preliminary list of possible alternative measures of control and/or reclamation, including possible vegetation of the piles upon closure. The presentation of alternative measures will include estimates of the costs thereof, of any necessary detailed feasibility studies, and of eventual implementation as well as preliminary estimates of relative effectiveness.

Upon acceptance by the DNR of this letter of intent, ASARCO and AMAX in conjunction with the DNR, can set forth a schedule for commencement and completion of designated activities. Specific commencement and completion dates for Phase 1 or certain activities in Phase 1 can be set forth, along with tentative dates for commencement and completion of Phase 2, if necessary. Of course, of necessity, adjustments whether minor or major, may need to be made in each Phase by the companies, in conjunction with the DNR, depending on what the investigations and studies reveal.

If you have any questions regarding this letter of intent, we would be happy to meet with you to discuss them. Otherwise, if this letter of intent reflects your understanding of our meeting and terms which are agreeable to the DNR in settling the lawsuits, please acknowledge your acceptance of and agreement with the terms outlined in this letter of intent by signing below. We can arrange a meeting at a mutually convenient time to discuss implementation of the terms outlined in this letter.

Very truly yours,

ASARCO Incorporated



Curtis F. Bates
Plant Manager

ACCEPTED BY:

MISSOURI DEPARTMENT OF
NATURAL RESOURCES



AMAX LEAD COMPANY OF MISSOURI

William E. Whitaker
Plant Manager

Robert J. Schreiber, Jr., P.E.
Director of Environmental Quality

cc: David E. Bedan, Ph.D.

ENVIRONMENTAL QUALITY
DATE RECEIVED

HOLLAND & HART

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CABLE HOLHART

May 30, 1984

ASPEN OFFICE
400 EAST MAIN STREET
ASPEN, COLORADO 81611
TELEPHONE (303) 925-3476
Copies to _____
Date Sent _____
Circulate _____
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SUITE 500
2020 CAREY AVENUE
CHEYENNE, WYOMING 82001
TELEPHONE (307) 632-2160
TELECOPIER (307) 778-8175

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EXPRESS MAIL

Robert J. Schreiber, Jr., P.E.
Director, Environmental Quality
Missouri Department of
Natural Resources
1919 Southridge Plaza
Jefferson City, MO 65102

Re: ASARCO Incorporated v. Fred Lafser, et al.

Dear Bob:

As we agreed at our joint meeting in your offices on May 18, 1984, I have prepared the following on behalf of ASARCO Incorporated in order to formalize for the Court the settlement arrangements we agreed upon in this case:

- (1) Settlement Agreement;
- (2) Joint Motion for Approval of Settlement Agreement, Release of Funds and Dismissal; and
- (3) Order of Court.

I have tried to keep the enclosed simple and straightforward. I have also signed the enclosed on behalf of ASARCO. However, if the Settlement Agreement is not signed by the Attorney General, I request that you return the signed copy to me as it will be null and void.

Our understanding is that you will present the agreed upon settlement arrangement and package to the Missouri Hazardous Waste Management Commission in a closed session meeting on June 5, 1984. I believe it would be appropriate and helpful for the Commission to memorialize in a formal resolution its decision to settle on the terms provided. This action is requested because the Settlement Agreement and the Joint Motion have been prepared for the signature of

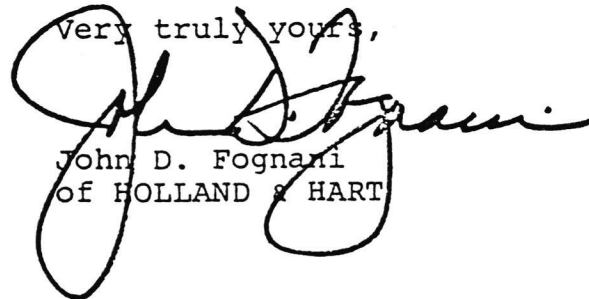
Robert J. Schreiber, Jr., P.E.
May 30, 1984
Page Two

respective counsel and then for presentation to the Court. We would be happy to prepare such a resolution, if you so desire.

If we can be of assistance, please advise us. Also, please apprise us of the results of the closed meeting with the Commission.

Finally, AMAX Lead Company will be transmitting its own set of pleadings or documents, using the same basic format, later in the week.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read "John D. Fognani".

John D. Fognani
of HOLLAND & HART

JDF/jlj

Enclosures

cc: Edward F. Downey, Esq.
Mr. Curtis F. Bates

CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT OF IRON COUNTY, MISSOURI

ASARCO INCORPORATED,)	
)	
Plaintiff,)	
)	
v.)	Case No. CV582-6CC
)	
FRED LAFSER, et al.,)	
)	
Defendants.)	

SETTLEMENT AGREEMENT

ASARCO Incorporated ("ASARCO"), plaintiff, and the Missouri Hazardous Waste Management Commission ("Commission") and the Director of the Missouri Department of Natural Resources ("DNR"), defendants, by and through their respective counsel of record, intending to be bound by this Settlement Agreement, hereby stipulate and agree as follows:

1. On or about January 9, 1982, ASARCO, in a Petition for Declaratory Judgment, challenged the Missouri hazardous waste management regulations adopted pursuant to the Missouri Hazardous Waste Management Law (the "Law"), 260.360, RSMo 1978, including its Extraction Procedure test ("EP") for determining toxicity, cited at 10 C.S.R. 25-4.010(5). ASARCO challenged the EP as illegal, invalid and inappropriate for determining toxicity of ASARCO's granulated smelter slag, a smelter-generated waste. ASARCO also challenged the validity of imposing on ASARCO, pursuant to Section 260.380 of the Law, a generator fee in the amount of \$10,000 per year, based on ASARCO's generation of granulated smelter slag.

2. During the course of the litigation, ASARCO has paid the maximum amount of generator fees of \$10,000 per year, or \$20,000 total, into the Registry of the Court.

3. In 1983, the Missouri Legislature enacted and Governor Kit Bond signed into law H.B. 528, which provides, in part, a general exclusion from the definition of "hazardous

waste" for "[s]olid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore." Additionally, H.B. 528 provides that no generator fee shall be imposed upon solid waste from the extraction, beneficiation and processing of such ores and minerals. As a result, neither the generator fee imposed pursuant to Section 260.380 of the Law nor the generator fee imposed by Section 260.475 of H.B. 528 is applicable to ASARCO's granulated smelter slag. In light of this legislation and in the spirit of cooperation, ASARCO, the DNR and the Commission agree to settle the pending litigation on the basis of the terms and conditions outlined herein.

4. As part of this Settlement Agreement, the Commission and the DNR acknowledge and agree that the \$20,000 in generator fees paid by ASARCO into the Registry of the Court, along with interest earned thereon, should appropriately be returned to ASARCO immediately upon execution of this Settlement Agreement, and the DNR and the Commission will do everything necessary and appropriate to accomplish the same. The DNR and the Commission also acknowledge and agree that ASARCO shall not be liable for payment of future generator fees pursuant to either Section 260.380 of the Law or Section 260.475 of H.B. 528 unless and until further action is taken by the Missouri Legislature to provide expressly for such fee liability.

5. As part of this Settlement Agreement, ASARCO agrees voluntarily to undertake an investigation and a study of potential problems posed by its granulated smelter slag pile located on its plant site, as set forth in the Letter Agreement dated January 18, 1984, and signed by ASARCO and Robert J. Schreiber for the DNR on May 18, 1984, which is incorporated herein by reference. From such investigation

and study, ASARCO shall voluntarily prescribe and adhere to a program which responds to any ascertained problems posed to the protection of ground water, usable as a drinking water source, underlying ASARCO's smelting plant site and ultimate closure of its granulated smelter slag pile upon cessation of ongoing operations.

6. Upon final authorization of settlement pursuant to this Settlement Agreement by the Commission and the DNR, and execution of the Settlement Agreement by the Missouri Attorney General, ASARCO shall voluntarily dismiss without prejudice its Petition for Declaratory Judgment. At the same time, the Missouri Attorney General shall voluntarily dismiss the counterclaim filed by the DNR and the Commission against ASARCO.

7. If approval of this Settlement Agreement by the Court is not forthcoming, then ASARCO shall have the right to proceed with its litigation in accordance with its Petition for Declaratory Judgment.

8. If the DNR or the Commission fails to take any action required under this Settlement Agreement as expeditiously as possible, or if release of the \$20,000 in generator fees paid by ASARCO into the Registry of the Court, with interest earned thereon, is not forthcoming, ASARCO shall have the right to proceed with this litigation.

9. Nothing in this Settlement Agreement shall be deemed to operate as a waiver of any legal right ASARCO may have including, but not limited to, the right to challenge any future action of the Commission and/or the DNR, except as expressly provided herein.

10. This Settlement Agreement and the Letter Agreement incorporated herein by reference contain the entire understanding of the parties with respect to the matters addressed herein, and there are no representations

or understandings other than those expressly set forth.

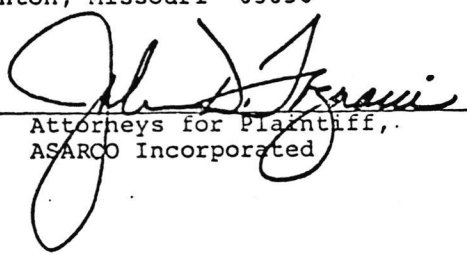
DATED this ____ day of June, 1984.

RESPECTFULLY SUBMITTED,

JOHN D. FOGNANI
Holland & Hart
Suite 2900
555 Seventeenth Street
Denver, Colorado 80202

WILLIAM R. EDGAR
104 West Russell Street
Ironton, Missouri 63650

By


Attorneys for Plaintiff,
ASARCO Incorporated

JOHN R. ASHCROFT
EDWARD F. DOWNEY
Missouri Attorney General's Office
Broadway State Office Building
8th Floor, P.O. Box 899
Jefferson City, Missouri 65102

By

Attorneys for Defendants,
Fred Lafser, Director of Missouri
Department of Natural Resources,
and the Missouri Hazardous Waste
Management Commission

IN THE CIRCUIT COURT OF IRON COUNTY, MISSOURI

ASARCO INCORPORATED,
Plaintiff,
v.
FRED LAFSER, et al.,
Defendants.

Case No. CV582-6CC

JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT,
RELEASE OF FUNDS AND DISMISSAL

COME NOW ASARCO Incorporated ("ASARCO"), plaintiff,
and the Missouri Hazardous Waste Management Commission
("Commission") and the Missouri Department of Natural
Resources ("DNR"), defendants, by and through their respec-
tive counsel of record, and jointly move the Court (1) for
approval of a Settlement Agreement, (2) for release of
funds and (3) for dismissal of the above-captioned case, and
an Order granting the same. In support thereof the parties
state as follows:

1. On or about January 9, 1982, ASARCO Incorporated, plaintiff, filed a Petition for Declaratory Judgment in the Circuit Court of Iron County, Missouri, challenging certain hazardous waste regulations (10 C.S.R. 25-1.010, et seq.) adopted by the Missouri Hazardous Waste Management Commission ("Commission") in conjunction with the Missouri Department of Natural Resources ("DNR"), defendants, purportedly pursuant to the Missouri Hazardous Waste Management Law (the "Law"), 260.360, et seq., RSMo 1978. The petition challenges the legality, validity, reliability and appropriateness of the Extraction Procedure test ("EP") set forth in the regulations for determining toxicity of certain "hazardous wastes," and requests a declaration of the Court that the EP is invalid and inapplicable to ASARCO's granulated smelter slag. The same petition requests judgment

declaring the imposition of a hazardous waste generator fee on ASARCO's granulated smelter slag to be invalid and inapplicable.

2. A Settlement Agreement, a copy of which is attached hereto, has been signed by the parties hereto in settlement of issues recited in the petition filed by ASARCO and in the answer and counterclaim filed by the Missouri Attorney General on behalf of the defendants.

3. Under the terms of the Settlement Agreement, the DNR and the Commission have agreed to the release to ASARCO of \$20,000 in generator fees paid into the Registry of the Court, along with interest earned thereon. The parties hereto jointly move this Court for immediate release to ASARCO of all such fees and interest earned thereon.

4. Under the terms of the Settlement Agreement, the parties hereto have agreed that upon the release to ASARCO of the \$20,000, with interest earned thereon, in fulfillment of the DNR's and the Commission's obligation pursuant to the Settlement Agreement, ASARCO herewith voluntarily dismisses without prejudice its Petition for Declaratory Judgment. Similarly, the Missouri Attorney General herewith voluntarily dismisses the counterclaim filed by the DNR and the Commission against ASARCO.

5. Under the terms of the Settlement Agreement, ASARCO has agreed to undertake an investigation and a study of potential problems posed by its granulated smelter slag pile and voluntarily to prescribe and adhere to a program which responds to ascertained problems.

6. Implementation of the Settlement Agreement will eliminate the need for litigation of this case.

WHEREFORE, the parties hereto respectfully move the Court to (1) approve the Settlement Agreement and grant leave of the Court for the parties hereto to take action necessary to implement the terms of the Settlement Agreement; (2) release immediately to ASARCO all funds paid by ASARCO into the Registry of the Court, with interest earned thereon; and (3) dismiss without prejudice ASARCO's Petition for Declaratory Judgment and the defendants' counterclaim against ASARCO.

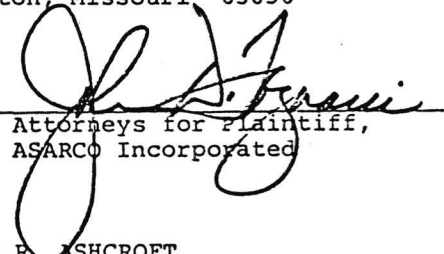
DATED this ____ day of June, 1984.

RESPECTFULLY SUBMITTED,

JOHN D. FOGNANI
Holland & Hart
Suite 2900, 555 Seventeenth Street
Denver, CO 80201

WILLIAM R. EDGAR
104 West Russell Street
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By


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By

Attorneys for Defendants,
Fred Lafser, Director of the
Missouri Department of Natural
Resources, and the Missouri
Hazardous Waste Management
Commission